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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Truth-In Billing and Billing Format	)	CC Docket No. 98-170
	)	
	)	

REPLY COMMENTS OF PRIMECO PERSONAL COMMUNICATIONS, L.P.

PrimeCo Personal Communications, L.P. ("PrimeCo"), hereby submits reply comments in the above-referenced proceeding.[1] The record herein supports PrimeCo's contention that Commission regulation of competitive CMRS carriers' billing practices is unnecessary, counterproductive, and fraught with jurisdictional and constitutional obstacles.[2] In this reply, PrimeCo primarily addresses the truth-in-billing recommendations submitted to the Commission by the Federal-State Joint Board on Universal Service ("Joint Board").[3] For the reasons discussed herein, the Joint Board's recommendations are fundamentally flawed and should be rejected by the Commission.

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List A B C D E

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1 *In the Matter of Truth-in-Billing and Billing Format, Notice of Proposed Rulemaking*, CC Docket No. 98-170, FCC 98-232 (released Sept. 17, 1998) ("*NPRM*").

2 *See generally* PrimeCo Comments; Bell Atlantic Mobile Comments; AirTouch Comments; USCC Comments; Nextel Comments; *see also* CTIA Comments; PCIA Comments; CommNet Cellular Comments.

3 *In the Matter of Federal-State Joint Board on Universal Service, Second Recommended Decision*, CC Docket No. 96-45, FCC 98J-7, ¶¶ 62-73 (rel. November 25, 1998) ("*Recommendation*").

I. THE COMMISSION SHOULD REJECT THE JOINT BOARD'S TRUTH-IN-BILLING RECOMMENDATIONS

The Commission in the *NPRM* advised interested parties that its "evaluation in this proceeding will be informed by any recommendations the Joint Board makes with respect to" the issues in this proceeding.[4] A divided Joint Board has now recommended generally that the Commission "provide to telecommunications carriers *strict guidance* regarding the extent to which they recover their universal service contributions from consumers."[5] For the reasons discussed in PrimeCo's comments, the Joint Board's recommendations must be rejected, at least in reference to competitive CMRS providers.

While the Commission has previously afforded the Joint Board's recommendations considerable weight, the *Recommendation*, as well as the *NPRM* and the comments in this proceeding, are devoid of any substantive factual or legal basis for regulating the billing practices of competitive CMRS providers. Further, like the Commission, the Board has "lumped" CMRS carriers together with other telecommunications carriers, yet points to no instances of improper CMRS carriers' billing practices.[6] Indeed, while calling for "strict guidance," the Board acknowledges "that it may also engender more confusion to use standard billing language where carriers have significant freedom in deciding how to set their own charges to consumers.[7] This is

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4 *NPRM* ¶ 26 n.31; *see also* Separate Statement of Commissioner Ness ("look[ing] forward to completing the Commission's 'truth in billing' proceeding, where these issues are already under review").

5 *Recommendation* ¶ 63 (emphasis added).

6 *Id.* ¶ 66; *NPRM* ¶ 6; *see also* Bell Atlantic Mobile Comments at 7.

7 *Recommendation* ¶ 72 n.91; *see also* CommNet Cellular Comments at 4;
(continued...)

particularly true for competitive CMRS carriers, and the record demonstrates that mandatory universal service billing language is unnecessary.[8] Also, (again like the Commission) the Joint Board addresses the constitutional issues raised by its proposals only in passing, and does not square the proposed regulation of CMRS carriers' billing practices with states' authority under Section 332(c)(3)'s "terms and conditions" provisions.[9]

While couching its recommendation in terms of "strict guidance," the Joint Board advocates "*express instructions*" regarding the manner in which carriers may depict, on bills, the charges used to recover universal service contributions. Specifically, the Joint Board recommends using the 46-character (including spaces) designation "Federal Carrier Universal Service Contribution" as standard nomenclature to describe any universal service line item, *together with* "an explanation that the carrier has chosen to separate its universal service contribution from its other costs of business, and to display the contribution as a line item on the consumer's bill."[10] It is unclear, however, whether the Joint Board gave any consideration to the costs and feasibility of implementing such changes, or whether such language would be deemed a mandatory part of all CMRS providers' bills. It appears that it did not. The Board also recommends that the

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7 (...continued)
CompTel Comments at 8.

8 *See* PrimeCo Comments at 10-11; PCIA Comments at 13-14; AirTouch Comments at 9-10; *see also* CTIA at 8.

9 *See* PrimeCo Comments at 14-16 (citing 47 U.S.C. § 332(c)(3)(A) and H.R. Rep. No. 103-111, at 261 (1993)); AirTouch Comments at 8-10; USCC Comments at 3-4; CTIA Comments at 8-11.

10 *Recommendation* ¶ 72.

Commission *prohibit* carriers from depicting such charges as a "tax," or as mandated by the Commission or the federal government by terms or placement on the bill.[11]

However, and as the record reflects, the Commission has already provided carriers sufficient guidance in this area, stating that:

> If contributors . . . choose to pass through part of their contributions and to specify that fact on customers' bills, contributors must be careful to convey information in a manner that does not mislead by omitting important information that indicates that the contributor has chosen to pass through the contribution or part of the contribution to its customers *and that accurately describes the nature of the charge*.[12]

In terms of substance, the Joint Board is recommending, in essence, that the Commission do what it has already done.[13] Thus, PrimeCo submits that no further Commission regulation is necessary in this regard.

Also troubling is the Joint Board's suggestion that the Commission prohibit carriers from "*incorrectly*" describing as mandatory or "*federally-approved*" any universal service line items on bills."[14] The Commission previously determined that "carriers *are permitted* to pass through their contribution requirements to all of their

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11 *Id.*

12 *Federal and State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd. 8776, 9212 (1997) ("*Universal Service Report and Order*") (emphasis added). The Commission stated further that carriers should not characterize the mechanism as a "surcharge." *Id.*

13 *See* PrimeCo Comments at 11-12; Excel Comments at 12.

14 *Recommendation* ¶¶ 70-71 (emphasis added); *see also* NASUCA Comments at 21.

customers in an equitable and nondiscriminatory manner."[15] Given this clear authorization, and the fact that the universal service charge results from a federal statutory and regulatory mandate, it is difficult to understand how the universal service line item is not "federally-approved." While the inclusion of a bill line item is not "mandatory," it is perfectly legitimate — and accurate — for a carrier to inform its customers that the federal government has *authorized* it to recover the costs of contributing to a *mandatory* federal program.[16] Further, where a CMRS carrier's particular line-item is unreasonably large, the Commission has ample authority under Sections 201, 202 and 208 to address any inequities that may arise.[17] Thus, there is no need for additional Commission intervention and the Joint Board, like the Commission, is skirting dangerously close to regulating billing out of concern that "the carrier's description . . . does not reflect the government's preferred explanation."[18]

Also troubling is the Joint Board's recommendation that the Commission require that a carrier's line item charge to consumers be "no greater than the carrier's

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15 *Universal Service Report and Order*, 12 FCC Rcd. at 9212 (emphasis added). The Commission subsequently "permit[ted] CMRS providers to recover their contributions through rates charged for all their services." *Federal-State Joint Board on Universal Service; Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, Fourth Order on Reconsideration*, CC Docket No. 96-45, FCC 97-420, 10 Comm. Reg. 1282, ¶ 309 (rel. Dec. 30, 1997).

16 *See* ACTA Comments at 7; Frontier Comments at 6-8.

17 *See* PrimeCo Comments at 12 (citing *CMRS Second Report and Order*, 9 FCC Rcd. 1411, 1478-79 (1994)); Bell Atlantic Mobile Comments at 9; *see also* Bell Atlantic Corporation Comments Attachment at 11; Excel Comments at 12.

18 *See Recommendation*, Separate Statement of Commissioner Harold Furchtgott-Roth.

universal service assessment rate."[19] As PCIA aptly noted in its comments, under- and over-recovery of universal service contributions "are inevitable and therefore are neither unreasonable nor misleading."[20] As the Joint Board is undoubtedly aware, the Commission's universal service funding scheme simply makes it impossible for a carrier to precisely recoup from its customers the exact amount paid to the universal service administrator on a month-to-month basis. Again, where a genuine inequity or gross over-recovery of costs arises in the CMRS context, Sections 201, 202 and 208 procedures are sufficient. Moreover, as PrimeCo discussed in its comments and the record supports, to the extent that over-recovery is a "problem" for CMRS customers, it is self-correcting — customers will simply migrate to other carriers based on the aggregate price of service.[21] The Joint Board, like the Commission, is precariously close to CMRS rate regulation.[22]

The Joint Board also acknowledges that many state and federal regulatory agencies may have jurisdiction over carriers' characterization of universal service line items on bills. The Board recommends that "the Commission work closely with these agencies to ensure that consumers are provided with complete and accurate information

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19 *Id.* ¶ 69. Some commenting state government parties advocated equally troubling and flawed requirements in this area. *See, e.g.*, Washington UTC Comments at 5; NASUCA Comments at 19-23; Minnesota Office of the Attorney General Comments at 12; New York State Consumer Protection Bd. Comments at 13. For the reasons stated herein and in PrimeCo's initial comments, these proposals should be rejected.

20 PCIA Comments at 15-16; CTIA Comments at 5-6; USCC Comments at 8; Omnipoint Comments at 14; AirTouch Comments at 9; *see also* Excel Comments at 13.

21 *See* PrimeCo Comments at 12; AirTouch Comments at 8; CTIA Comments at 5-6; Bell Atlantic Mobile Comments at 8.

22 *See* PrimeCo Comments at 15-16.

regarding the nature of universal service line items."[23] This recommendation, however, simply begs the threshold question of whether Commission regulation in this arena is necessary *at all*.[24] Indeed, the Joint Board's recommendation appears to go *beyond* what states may be requiring — which illustrates the potential for overlapping and inconsistent regulation in this area. The Texas PUC, for example, has indicated that a simple "TX USF CHARGE," supplemented by separate bill inserts for only two months, will be sufficient for purposes of the state's universal service program.[25] In sum, when a carriers' billing practices raise issues of genuine interest to the Commission under the Communications Act, such practices can be addressed on a case-by-case basis pursuant to Sections 201, 202 and 208. Otherwise, the record in this proceeding indicates that Commission intervention is unwarranted and that other state and federal agencies are sufficiently able to protect consumers with respect to CMRS billing practices.[26]

As a final note, customer billing is a part of the carrier-customer relationship which, in an intensely competitive market such as CMRS, must be allowed to evolve to accommodate customers' demands and needs. As the Commission is aware, customers' increasing sophistication, the availability of prepaid plans, and the potential for online availability of account information will, for many customers, make the traditional

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23 *Recommendation* ¶ 73.

24 *See* PrimeCo Comments at 14-15; USCC Comments at 9.

25 *See Public Utility Commission of Texas, News Release, PUC Adopts Changes to Universal Service Fund* (rel. Dec. 1, 1998), *reprinted at* the Texas PUC's web page, http://www.puc.texas.gov/nrelease/120198a.htm.

26 *See supra* note 17.

paper bill less important, if not irrelevant, to that relationship.[27] The Commission should not impose regulations — such as those proposed in the *NPRM* and *Recommendation* — that micromanage the content and format of carriers' bills and unnecessarily limit carriers' ability to provide innovative billing solutions to meet customers' needs.

II. CONCLUSION

For the foregoing reasons, and the reasons discussed in PrimeCo's comments, the Commission should reject the Joint Board's truth-in-billing recommendations and should not further regulate CMRS carriers' billing practices.

Respectfully submitted,

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[27] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Third Report*, FCC 98-91, at 25 (rel. June 11, 1998) (discussing increasing use of prepaid plans); Teligent Comments at 4-7 (discussing consumer benefits of electronic billing solutions); *see also Advanced Telecommunications Capability/Section 706 Notice of Inquiry*, CC Docket No. 98-146, FCC 98-187, ¶ 68 (rel. August 7, 1998).